

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:14-cr-229-MOC**

UNITED STATES OF AMERICA,

vs.

MALCOLM JARREL HARTLEY,

Defendant.

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ORDER

THIS MATTER comes before the Court on Defendant's second pro se "Motion for Compassionate Release/Reduction of Sentence." (Doc. No. 956). The Government has responded in opposition to the motion.

On May 5, 2017, this Court sentenced Defendant to multiple life sentences following his guilty plea to various racketeering, murder, and firearms offenses. (Doc. No. 580). Defendant is currently serving his sentence at USP Hazelton. On February 11, 2021, Defendant filed his first pro se motion for compassionate release. (Doc. No. 942). The Government responded in opposition on March 1, 2021. (Doc. No. 946). This Court denied Defendant's motion without prejudice on March 12, 2021, for failure to exhaust administrative remedies. (Doc. No. 948). Defendant appealed this Court's order on April 7, 2021, and that appeal is pending before the Fourth Circuit Court of Appeals. (Doc. No. 953). Notwithstanding the pending appeal, Defendant filed his second, pending motion on April 30, 2021.

Defendant's motion will be denied without prejudice for two reasons. First, Defendant's appeal of this Court's denial of his first compassionate release motion, which appears to be based on the same circumstances as the pending motion, is still pending at the Fourth Circuit, so this Court lacks jurisdiction to grant relief. Second, with this second filing, Defendant still has not

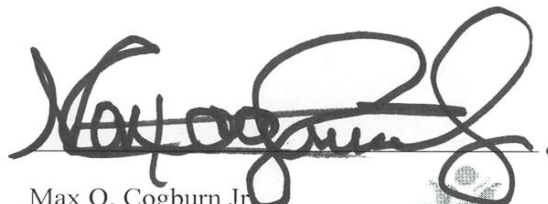
shown that he exhausted his administrative remedies before he filed the pending motion.

Finally, to the extent that Defendant also seeks appointment of counsel in his motion, his request is denied, as he does not have a post-conviction constitutional right to counsel.

ORDER

IT IS, THEREFORE, ORDERED that Defendant's second pro se "Motion for Reconsideration," (Doc. No. 956), is **DENIED** without prejudice.

Signed: June 1, 2021


Max O. Cogburn Jr.
United States District Judge